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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,880	04/14/2004	Douglas P. Lynch	05-00634-02	5670

23845 7590 07/23/2008

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EXAMINER	
LE, HUYEN D	

ART UNIT	PAPER NUMBER
2615	

MAIL DATE	DELIVERY MODE
07/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/823,880	LYNCH ET AL.	
	Examiner	Art Unit	
	HUYEN D. LE	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9,10,12-16 and 21-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9,10,12-16 and 21-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 9-10, 12-14, 16, 21, 23 and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller (U.S. patent 6,726,618).

Regarding claims 9, 16 and 28, Miller teaches a method and apparatus of a behind-the-ear unit (200), a headpiece (204, 206, figure 2), and an assistive listening device cap (100, 102, 104, 118) configured to attach to the headpiece (204, 206) by the magnets (102, 206). Since the Applicant does not specifically claim the locations of the listening device cap or the external listening device cap relative to what parts of the system, as broadly claimed, the assistive listening device cap (100, 102, 104, 118) is external to the housing of the behind-the-ear unit (200) or the headpiece (204, 206).

The assistive listening cap (100, 102, 104, 118) includes data communication electronics (104, 118), and the assistive listening cap (100, 102, 104, 118) is configured to mechanically attach to the exterior surface of the headpiece (204, 206) through the magnets, and the data communication electronics are configured to communicate with corresponding communication electronics within the headpiece (col. 6, lines 60-67 through col. 7, lines 1-10).

Regarding claim 10, Miller teaches the behind-the-ear unit including a cochlear implant speech processor (SSP in the housing 200).

Regarding claim 12, Miller teaches the data communication electronics that are configured to communicate with corresponding communication electronics of the behind-the-ear unit (200) or the headpiece (204) as claimed (col. 6, lines 53-67 through col. 7, lines 1-10).

Regarding claim 13, Miller teaches the data communication electronics that are configured to communicate with corresponding communications electronics implanted within the head of a patient with impaired hearing as claimed (figure 4, col. 6, lines 60-67 through col. 7, lines 1-21).

Regarding claims 14, 21 and 23, Miller teaches the data communication electronics that are configured to communicate with the communication electronics of the headpiece (204, 206) through wireless signals as claimed (col. 7, lines 6-10).

Regarding claims 29-31, Miller teaches a system that comprises an implantable hearing device (the implantable hearing aid 100, figure 4), a headpiece (200 and the speech signal processing (SSP) unit), and an external assistive listening device cap (204, 206) to attach the headpiece through the wire (202) as claimed. Since the Applicant does not specifically claim the functions and the components in a behind-the-ear unit, as broadly claimed, Miller shows a behind-the-ear unit (208 and/or the earhook of the housing 200 in figure 2).

Regarding claim 32, as shown in figure 2, the data communication electronics of the listening device cap (204, 206) are configured to communicate with the communications of the headpiece (200) through an electrically conductive wire.

Regarding claim 33, since the headpiece (204, 206) is electrically connected to SSP unit in the housing (200), it is inherent that there is an external power source for transmitting energy to the electronics of the listening device cap when the system is in operation.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 15, 22 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U.S. patent 6,726,618).

Regarding claim 15, Millter does not specifically teach a power source for the data communication electronics in the assistive listening device cap (100). However, providing a power source for an implanted hearing device is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide a power source in the assistive listening device cap (100) or in the implanted electromagnetic acoustic transducer (300) of the Miller device for better providing a power source to the data communication electronics.

Regarding claims 22 and 24, Miller teaches the data communication electronics of the listening device cap that are configured to communicate with the communication electronics of the headpiece (204, 206) through wireless signals as claimed (col. 7, lines 5-10). Miller does not specifically teach the direct electrical contacts or electrically conductive wire as claimed.

However, it would have been obvious to one skilled in the art to provide the wireless or wired signals such as the direct electrical contacts or electrically conductive wire for the desired purpose of better transmitting signals between the data communications electronics of the listening device cap (100) and the communication electronics of the headpiece (204, 206) depending on the applications.

Regarding claims 25-27, Millter does not specifically teach a primary battery or a rechargeable battery within the listening device cap (100), or an external power source capable of transmitting energy to the electronics of the assistive listening device cap (100). However, providing a power source for an implanted hearing device is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any power source in the assistive listening device cap (100) or in the implanted electromagnetic acoustic transducer (300) of the Miller device such as a primary batter, a rechargeable battery or an external power source for better providing a power source to the data communication electronics.

Response to Arguments

5. Applicant's arguments filed 4/8/08 have been fully considered but they are not persuasive.

Responding to the arguments about the limitation of the "external" assistive listening device cap, the examiner refers to the Office Action. Since the Applicant does not specifically claim the locations of the listening device cap or the listening device cap which is external relative to what parts of the system, as broadly claimed, the assistive listening device cap (100, 102, 104, 118) is external to the housing of the behind-the-ear unit (200) or the headpiece (204, 206).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SUHAN NI can be reached on (571) 272-7505. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/
Primary Examiner, Art Unit 2615

HL
July 19, 2008